

Government Superannuation Fund Amendment Bill

Government Bill

Explanatory note

General policy statement

The Government Superannuation Fund Amendment Bill 2000 amends the Government Superannuation Fund Act 1956. The Bill restructures the governance arrangements for the Government Superannuation Fund. The Bill creates a new Crown entity, GSF New Zealand, which will be responsible for the management of the Fund and the administration of the GSF schemes.

The Bill establishes a new regime for the investment of the Fund. The Bill sets out the roles of the Minister of Finance and GSF New Zealand (GSFNZ). In particular, the Minister is able to give certain directions to GSFNZ relating to the investment of the Fund. However, these directions must be consistent with GSFNZ's obligation to manage the Fund on a prudent commercial basis, consistent with best-practice portfolio management.

In addition, the Bill makes various minor technical amendments to the Government Superannuation Fund Act 1956.

Clause by clause analysis

Clause 1 relates to the Title.

Clause 2 relates to the commencement. Most of the Bill is to come into force on **1 April 2001**. However, 2 provisions are to come into force earlier. These are—

- a provision allowing the Minister of Finance, before **1 April 2001**, to enter into transitional agreements on behalf of the new Crown entity (*clause 29*):

- amendments to the National Provident Fund Restructuring Act 1990 to allow the Board of Trustees of the National Provident Fund the flexibility to provide services in respect of certain other funds and superannuation schemes (*clause 38*).

Clause 3 sets out the purpose of the Bill. The Bill's main purpose is to provide for new governance arrangements for the Fund and the schemes. This includes setting up the new Crown entity, GSF New Zealand (GSFNZ).

In addition, the Bill makes certain minor miscellaneous amendments to the Government Superannuation Fund Act 1956 affecting the schemes. The principal amendments in this category are as follows:

- redefining salary, so that the salary on which contributions and superannuation entitlements are based is aligned with current GSF administrative practice (*clauses 4(2) and 16*):
- removing the requirement that contributors have to give 3 months' notice of their intention to cease contributing to the schemes (*clauses 10, 14, and 41*):
- clarifying the position of contributions and benefits in respect of contributors under the old variable percentage scheme (*clause 12*):
- clarifying the wording of section 61L(4) to reflect established GSF practice and to remove drafting circularity (*clause 13*):
- reinstating a lost provision that clarifies whether amounts required to be paid into the Fund count as contributions (*clause 16*).

Part 1

Amendments to principal Act

Clause 4 relates to interpretation.

Subclause (1) deals with definitions that are relevant to the restructuring.

Subclause (2) sets out the new definition of **salary**, on which contributions and superannuation entitlements are based. The existing definition in the principal Act—

- provides that **salary** means the salary or wages paid in respect of a contributor's service:

- includes some specific inclusions and exclusions for particular classes of contributors, eg, allowances and overtime payments to certain teaching staff.

The proposed new definition provides that **salary**—

- means the salary and wages paid regularly in return for services:
- does not include bonus payments, payments for overtime, allowances paid for special work performed, the reimbursement of expenses, lump sum payments in lieu of notice, retiring gratuities, redundancy gratuities, and contributions paid for or in respect of employer contributions:
- may include a period of paid leave, but only if it is paid before the contributor ceases Government service.

Clause 5 repeals the section of the Act that provides for there to be a Superintendent of the Government Superannuation Fund. The existing Superintendent is an officer of the Ministry of Economic Development. The existing functions of the Superintendent are to be taken over by the new Crown entity, GSFNZ.

Clause 6 relates to the existing appeals process under the Act, and replaces the list of matters that the Government Superannuation Appeals Board takes into account when it hears appeals from the exercise of the discretionary powers under the Act. The purposes of the amendment are—

- to ensure that the Appeals Board acts in accordance with the published statement of GSF policies; and
- to ensure that the full range of affected interests is taken into account when appeals are determined.

The existing section 12 of the Act requires the Appeals Board to take into account only—

- the report by the Superintendent on the decision appealed against; and
- the interests of the Crown as notified to the Board in writing by the Minister; and
- the interests of the appellant.

In addition, the existing section 12 currently empowers the Appeals Board to take into account such other evidence (including written and oral evidence) as in equity and good conscience it thinks fit.

Clause 7 substitutes new provisions as follows:

- new provisions establishing the new Crown entity, GSFNZ, and setting out its functions, powers, and other matters relating to its operation (*new sections 14 to 14G*):
- a new provision relating to funding of administration expenses, to ensure that employers meet the full administration costs of current contributors, and that administration costs associated with other contributors are met by the core Crown (*new section 14C*):
- a new provision requiring GSFNZ to invest the Fund on a prudent, commercial basis, consistent with best-practice portfolio management (*new section 15*):
- a new provision empowering the Minister to give certain directions to GSFNZ relating to the investment of the Fund (*new section 15A*):
- a replacement provision requiring the property of the Fund to be held for the purpose of paying benefits under the Act (*new section 17*):
- a replacement provision relating to the interest payable on money held in error (*new section 18*):
- replacement provisions relating to administration and investment management and custodianship of the Fund (*new sections 19 and 19A*).

Clause 8 replaces section 19F, which relates to the way in which the discretionary powers are to be exercised under the Act. The main purposes of the replacement are—

- to require GSFNZ to act in accordance with the existing statement of GSF policies. The existing section 19F required the Superintendent, as soon as practicable after 1 October 1995, to publish a statement of the policies developed by the pre-1995 Government Superannuation Board in relation to the exercise of all of the discretionary powers. That statement of policies was duly published in 1995, and republished in updated form in December 1999:
- to align the way in which GSFNZ will exercise the discretionary powers under the Act with the way in which the Appeals Board will determine any appeal relating to that decision.

Clause 9 repeals section 19G, which relates to the delegation of the Superintendent's functions or powers. The delegation powers of GSFNZ are set out in *Schedule 1* of the Bill.

Clause 10 removes the obligation in the existing Act for old general scheme contributors to give 3 months' notice of their intention to stop contributing to the scheme and to maintain their contributions during that period.

Clause 11 changes the way in which the interest rate is set under section 42. The existing section provides that the Minister of Finance determines the rate of interest that applies to any interest payments under the section. The proposed amendment provides instead that the interest rate is to be calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*.

Clause 12 clarifies the position of contributions and benefits in respect of contributors under the old variable percentage scheme. Section 61E(5) of the existing Act does not take account of the special rules that apply under the variable percentage scheme. The amendment fixes that.

Clause 13 clarifies the wording of section 61L(4) to reflect established GSF practice. The intent of the existing provision was to allow contributors aged 50 and over under the new general scheme who have completed not less than 10 years' contributory service to make payments into the Fund to increase their pension, but the wording of it is circular. The amendment gives effect to the original intent.

Clause 14 removes the obligation in the existing Act for new general scheme contributors to give 3 months' notice of their intention to stop contributing to the scheme and to maintain their contributions during that period.

Clause 15 changes the way in which the interest rate is set under section 71K(1)(b). The existing section provides that the Minister of Finance determines the rate of interest that applies to any interest payments under the section. The proposed amendment provides instead that the interest rate is to be calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*.

Clause 16 repeals sections 89B and 89C and substitutes a new 89B of the principal Act. The existing section 89B has 2 main effects—

- it enables the Governor-General, by Order in Council, to declare that any allowance or class of allowances specified in the Order is deemed to be salary for the purposes of the Act:
- it provides that, except as so declared, no allowance is deemed to be or to have at any time been salary.

No Orders in Council relating to salary have been made since 1984.

The new section 89B substituted by the clause reinstates a provision that was deleted from the principal Act in 1985, but that is still needed. The provision gives GSFNZ the power to determine whether or not any sum that it has directed a contributor to pay into the Fund should count as contributions.

Clause 17 relates to the annual report on matters affecting the Fund. The existing section 93B(1)(b) of the Act requires the annual report to include the names of, and any changes since the last annual report in, the administration manager or administration managers of the schemes. The proposed amendment extends this so that the annual report must also include details of any investment manager or custodian.

Clause 18 changes the way in which the interest rate is set under section 95B. The existing section provides that the Minister of Finance determines the rate of interest that applies to any interest payments under the section. The proposed amendment provides instead that the interest rate is to be calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*.

Clause 19 replaces existing references to the administration manager with references to GSFNZ. The references are in section 95D of the principal Act, which relates to information that has to be provided by controlling authorities.

Clause 20 amends section 97 to repeal obsolete regulation-making powers in the Act.

Clause 21 replaces all references to the Superintendent in the principal Act, and any regulations made under that Act, with references to the new Crown entity, GSFNZ. The existing functions of the Superintendent are to be taken over by GSFNZ.

Part 2

Miscellaneous provisions

Part 2 contains—

- transitional provisions relating to the restructuring, including provisions relating to employees:
- a provision protecting some past decisions made under the principal Act:
- consequential amendments to other Acts:
- revocation of spent orders relating to salary and allowances.

Clauses 23 to 30—

- vest the relevant GSF property and liabilities in GSFNZ (*clause 23*):
- preserve the status of the existing schemes administration contract with AXA New Zealand Limited (*clause 24*):
- provide that the restructuring does not cause difficulties in terms of books and records, tax, existing contracts, and third party rights (*clauses 25 to 28*). The clauses are designed, basically, to preserve the status quo:
- enable the Minister to enter into transitional contracts before **1 April 2001** on behalf of GSFNZ (*clause 29*):
- require the Ministry of Economic Development to prepare a report and accounts for the period from **1 July 2000 to 1 April 2001** (*clause 30*).

Clauses 31 to 34 relate to the employees of the Ministry of Economic Development who work in the government superannuation fund unit of that Ministry. The clauses provide for matters related to any possible transfer of employees to GSFNZ.

Clause 35 protects certain past decisions. The decisions affected are ones made by the Government Superannuation Appeals Board or the Superintendent or a former GSF Board or a Minister in favour of an individual contributor, beneficiary, or potential beneficiary.

Clause 36 adds GSFNZ (and any subsidiary it might have) to Part II of the First Schedule of the Ombudsmen Act 1975. This ensures that GSFNZ (and any subsidiary) is an organisation to which both that Act and the Official Information Act 1982 apply.

Clause 37 adds GSFNZ to the Fourth, Fifth, and Sixth Schedules of the Public Finance Act 1989. The Fourth Schedule lists Crown

entities, the Fifth Schedule lists Crown entities required to include statements of service performance in their annual financial statements, and the Sixth Schedule lists Crown entities required to prepare statements of intent.

Clause 38 amends the National Provident Fund Restructuring Act 1990 to allow the Board of Trustees of the National Provident Fund the flexibility, if required, to provide services in respect of other funds or superannuation schemes, including GSFNZ, that are managed by the Crown or a Crown entity.

Clause 39 amends the Income Tax Act 1994 to provide that, for tax purposes, GSFNZ is to be treated as if it were the trustee of the GSF schemes.

Clause 40 makes consequential amendments to other Acts.

Clause 41 removes the obligation in the Government Superannuation Fund (Ceasing Contributions) Regulations 1995 for contributors to give 3 months' notice of their intention to stop contributing to the schemes and to maintain their contributions during that period.

Clause 42 revokes old Orders in Council relating to allowances that were included as part of salary for GSF contributions and superannuation entitlement purposes.

Hon Dr Michael Cullen

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Government Superannuation Fund Amendment Act **2000**.
- (2) In this Act, the Government Superannuation Fund Act 1956¹ is called “the principal Act”.

¹ 1956 No 47

2 Commencement

- (1) **Sections 29** (power of Minister to enter agreements) and **38** (amendment to National Provident Fund Restructuring Act 1990) come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on **1 April 2001**.

3 Purpose

The purpose of this Act is—

- (a) to establish a Crown entity to manage and administer the Fund and the schemes:
- (b) to make other miscellaneous changes in respect of the Fund and the schemes. 5

Part 1 Amendments to principal Act

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definitions of the terms **custodian** and **Superintendent**, and inserting, in their appropriate alphabetical order, the following definitions: 10

“**custodian** means a person appointed under **section 19A(1)** to act as custodian of the Fund, or any part of the Fund 15

“**GSFNZ** means GSF New Zealand established under **section 14**

“**GSFNZ board** means the board of GSFNZ referred to in **section 14E**

“**invest** means to carry on any activity, do any act, or enter into any transaction that GSFNZ considers to be for the purpose, directly or indirectly, of— 20

“(a) enhancing or protecting the value of the Fund:

“(b) managing, or enabling the management of, the Fund

“**subsidiary** has the same meaning as in sections 5 to 8 of the Companies Act 1993.” 25

- (2) Section 2(1) of the principal Act is amended by repealing the definition of the term **salary**, and substituting the following definition:

“**salary**— 30

“(a) means the salary and wages paid regularly in return for services:

“(b) does not include bonus payments, payments for overtime, allowances paid for special work performed, the reimbursement of expenses, lump sum payments in lieu of notice, retiring gratuities, redundancy gratuities, and contributions paid for or in respect of employer contributions: 35

“(c) may include a period of paid leave, but only if it is paid before the contributor ceases Government service”.

5 Repeal of section 2C

The principal Act is amended by repealing section 2C (which relates to the Superintendent of the Government Superannuation Fund). 5

6 New section 12 substituted

The principal Act is amended by repealing section 12, and substituting the following section:

“12 Matters to be taken into account on appeal 10

The Board must—

“(a) act in accordance with the statement of policies published by the Superintendent in December 1999 (as that statement may be amended under **section 19F(2)**); and

“(b) take into account the interests of any person who has an interest in the matter that is the subject of the appeal (including, without limitation, the interests of the Crown and of any contributor, beneficiary, or controlling authority affected by the matter), to the extent that those interests are known to the Board.” 15 20

7 New headings and sections 14 to 19A substituted

(1) The principal Act is amended by repealing sections 14 to 19D, and substituting the following headings and sections:

“*GSF New Zealand*

“14 Establishment of GSF New Zealand 25

“(1) This section establishes GSF New Zealand (GSFNZ).

“(2) GSFNZ is a Crown entity for the purposes of the Public Finance Act 1989.

“14A Body corporate status and powers

“(1) GSFNZ is a body corporate with perpetual succession. 30

“(2) GSFNZ has—

“(a) full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and

“(b) for the purposes of **paragraph (a)**, full rights, powers, and privileges. 35

- “(3) There are no restrictions on GSFNZ’s investment powers, other than as provided by **sections 15 and 15A**.
- “(4) GSFNZ may borrow subject to any rules set from time to time by the Minister.

Compare: 1993 No 105 s 16(1)

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“14B **Functions**

- “(1) The functions of GSFNZ are to manage and administer the Fund and the schemes in accordance with this Act.
- “(2) GSFNZ is not a trustee, or a constructive trustee, in relation to the exercise of its functions or to any other matter (except as otherwise provided in section HJ 1 of the Income Tax Act 1994 for tax purposes). 10
- “(3) The functions of GSFNZ include, if the Minister so directs, the provision of services in respect of any fund or superannuation scheme that is managed by the Crown or a Crown entity and approved by the Minister for that purpose, on such terms and conditions as the GSFNZ board thinks fit. 15

“14C **Funding of GSFNZ**

- “(1) The expenses incurred by GSFNZ in managing and administering the Fund and the schemes— 20
- “(a) are to be paid out of the Fund; and
- “(b) are to be recovered under section 95 in accordance with this section.
- “(2) The portion of the expenses attributable to all contributors is to be recovered, each financial year, out of the money from which the salaries of the contributors are paid. 25
- “(3) The portion attributable to contributors includes estimates of all future expenses attributable to contributors once they cease to be contributors.
- “(4) The portion of the expenses attributable to any other person is to be recovered, each financial year, from the Crown. 30
- “(5) Section 95 applies as if references in that section to benefits included expenses, with any other necessary modifications.
- “(6) GSFNZ may determine the basis on which expenses are apportioned under that section, but the determination has no effect unless the Government Actuary certifies that the apportionment is fair and equitable. 35

“14D Audit Office to be auditor of GSFNZ

- “(1) The Audit Office is the auditor of GSFNZ and any subsidiary of GSFNZ.
- “(2) For that purpose, the Audit Office has and may exercise all of the functions, duties, and powers that the Audit Office has under the Public Finance Act 1977 in respect of public money and public stores. 5

*“Board of GSFNZ***“14E Role of board of GSFNZ**

- “(1) All decisions relating to the business of GSFNZ are to be made by or under the authority of a board called the GSFNZ board. 10
- “(2) The GSFNZ board has all the powers necessary for managing, and for directing or supervising the management of, the business of GSFNZ. 15

“14F Membership of GSFNZ board

The GSFNZ board must consist of at least 4, but not more than 7, board members appointed by the Minister.

“14G Further provisions applying to GSFNZ board

- “(1) **Schedule 4** applies to the GSFNZ board and its members. 20
- “(2) The Governor-General may, by Order in Council, amend any provision of **clauses 13 to 51 of Schedule 4**.

*“Investment of Fund***“15 Investment of Fund**

- “(1) GSFNZ is responsible for investing the Fund. 25
- “(2) GSFNZ must invest the Fund on a prudent, commercial basis, consistent with best-practice portfolio management.

“15A Ministerial directions relating to investment of Fund

- “(1) The Minister may, after consultation with GSFNZ, direct GSFNZ, in investing the Fund,— 30
- “(a) to meet the Government’s expectations as to the Fund’s performance, including the Government’s expectations as to risk and return:

- “(b) not to invest in a specified investment or class of investments to which the Crown already has a direct or indirect exposure, for the purpose of limiting that exposure.
- “(2) The Minister must not give a direction that is inconsistent with GSFNZ’s duty to invest the Fund on a prudent, commercial basis, consistent with best-practice portfolio management. 5
- “(3) GSFNZ must notify the Minister how it proposes to give effect to any direction.
- “(4) The Minister must present to the House of Representatives a copy of any direction, as soon as practicable after it is given to GSFNZ. 10

“Further provisions relating to Fund

“16 **Reporting by GSFNZ on Fund**

- “(1) GSFNZ must report to the Minister on the Fund at those intervals that the Minister may require. 15
- “(2) GSFNZ’s report must include any information that the Minister may require.

“17 **Property to be held for paying benefits**

- “(1) All property comprising the Fund must be held for the purpose of paying the benefits that are payable under this Act. 20
- “(2) This section does not prevent GSFNZ from making a payment out of the Fund for the purpose of carrying out its functions.

“18 **Interest on money held in error**

- “(1) This section applies if GSFNZ pays interest, out of the Fund, on any money held in error in the Fund. 25
- “(2) The interest must be at a rate calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*.

*“Administration managers, investment managers,
and custodians*

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“19 **Administration and investment management**

- “(1) GSFNZ may appoint, on any terms and conditions that GSFNZ thinks fit, 1 or more persons (including any department) to undertake each of the following functions:

- “(a) the administration of the schemes:
“(b) the investment of any part of the Fund.
- “(2) Different persons may be appointed in respect of different schemes or different parts of the Fund.
- “(3) GSFNZ must specify, in each instrument of appointment, the powers and rights of the person appointed (including, without limitation, the extent of that person’s power to delegate any of those powers and rights). 5
- “(4) This section does not limit **section 14A**.
- “19A **Custodianship of Fund** 10
- “(1) GSFNZ may appoint a person or persons (including any department) to act as custodian of the Fund, or any part of the Fund.
- “(2) A custodian so appointed must hold the property of the Fund, or that part of the property of the Fund in respect of which they have been appointed, in their name, or if GSFNZ authorises it, in the name of 1 or more nominees. 15
- “(3) An appointment may be on any terms and conditions that GSFNZ thinks fit.
- “(4) GSFNZ must specify, in each instrument of appointment, the powers and rights of the person or persons appointed (including, without limitation, the extent of that person’s powers to delegate any of those powers and rights). 20
- “(5) This section does not limit **section 14A**.
- “*Provisions relating to schemes*”. 25
- (2) Section 95AA of the principal Act is consequentially amended by repealing subsection (3).
- (3) The principal Act is amended by adding the **Schedule 4** set out in **Schedule 1** of this Act.
- 8 New section 19F substituted** 30
The principal Act is amended by repealing section 19F, and substituting the following section:

“19F Statement of policies and exercise of discretionary powers

- “(1) GSFNZ must, when exercising its discretionary powers in relation to the schemes,—
- “(a) act in accordance with the statement of policies published by the Superintendent in December 1999 (as that statement may be amended under **subsection (2)**); and 5
 - “(b) take into account the interests of any person who has an interest in the matter (including, without limitation, the interests of the Crown and of any contributor, beneficiary, or controlling authority affected by the matter), to the extent that those interests are known to GSFNZ. 10
- “(2) If GSFNZ proposes to make any change to the published statement of policies, it must—
- “(a) take into account the interests referred to in **subsection (1)(b)**, to the extent that those interests are known to GSFNZ; and 15
 - “(b) republish the statement of policies, or the part of the statement of policies affected by the change; and
 - “(c) send a copy of the republished statement of policies to the Government Superannuation Appeals Board.” 20

9 Repeal of section 19G

The principal Act is amended by repealing section 19G (which relates to the delegation of the Superintendent’s functions or powers). 25

10 Right to cease to be contributor under Part II

Section 28(1) of the principal Act is amended by omitting the words “on the expiration of 3 months from the date on which the notice is delivered”, and substituting the words “on the expiration of the day on which the notice is received by GSFNZ”. 30

11 Refund of contributions on retiring before entitled to retiring allowance

- (1) Section 42(3) of the principal Act is amended by omitting the words “at such rate as the Minister of Finance from time to 35

time determines”, and substituting the words “at a rate calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*”.

- (2) Section 42(6) of the principal Act is amended by omitting the words “at such rate and on such basis as may from time to time be determined by the Minister of Finance”, and substituting the words “at a rate, and on a basis, calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*”.

12 Contributors under Part II may become contributors under Part IIA 10

Section 61E of the principal Act is amended by inserting, after subsection (5), the following subsection:

- “(5A) Subsection (5) is subject, in the case of persons to whom section 30 (variable percentage scheme) applies, to section 30(5) and (6) and section 61P.” 15

13 Computation of retiring allowance

Section 61L of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

- “(4) A contributor who is entitled under section 61I(4) to receive a retiring allowance may elect to increase the amount of that retiring allowance to the amount that would have been payable if the contributor had retired at an age stated in the election and not exceeding 65 years subject to— 20
- “(a) the contributor making the election before attaining the age of 60; and 25
 - “(b) the contributor complying with any terms and conditions set by GSFNZ, including making any payments into the Fund that GSFNZ thinks fit to impose for the purpose of funding the additional notional period of contributory service to which the election applies; and 30
 - “(c) the maximum amount of the retiring allowance being the amount calculated under subsection (1) as if the contributor had retired at the age stated in the election.”

14 Right to cease to be contributor 35

Section 61R(1) of the principal Act is amended by omitting the words “on the expiration of 3 months from the date on

which the notice is delivered”, and substituting the words “on the expiration of the day on which the notice is received by GSFNZ”.

- 15 Benefits where contributor leaves regular forces and is not entitled to retiring allowance** 5
- Section 71K(1)(b) of the principal Act is amended by omitting the words “at such rate as the Minister of Finance from time to time determines”, and substituting the words “at a rate calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*”. 10
- 16 New section 89B substituted**
- (1) The principal Act is amended by repealing sections 89B and 89C (which relate to allowances that may be included as salary), and substituting the following section:
- “89B Other contributions** 15
- “(1) This section applies if a contributor has been required (whether before or after the commencement this section) to pay any sum into the Fund otherwise than by deduction of salary (whether in respect of any period that is included in a period of contributory service, or in respect of contributions not duly paid by deduction from salary, or in respect of contributions repaid after having been refunded to the contributor, or otherwise). 20
- “(2) GSFNZ may determine whether the whole or any part of that sum is to be treated as contributions for the purpose of this Act, and the amount so determined is to be treated as contributions accordingly. 25
- “(3) Except as provided in this section the only sums that are to form part of a contributor’s contributions for the purpose of this Act are the sums that are deducted from the contributor’s salary and paid to the Fund in accordance with the relevant section of this Act that requires a percentage of the contributor’s salary to be so deducted and paid.” 30
- (2) Section 71A of the principal Act is consequentially amended by omitting from the definition of **salary** the words “together with such allowances as are specified in Orders in Council made pursuant to section 56 or section 89B of this Act”. 35

- 17 Annual report**
Section 93B(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
“(b) the names of, and any changes since the last annual report in, any administration manager, investment manager, and custodian; and” 5
- 18 Interest payable on overdue amounts**
Section 95B of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
“(b) at a rate calculated using a method that has been determined by GSFNZ, approved by the Minister, and published in the *Gazette*.” 10
- 19 Information to be provided by controlling authorities**
Section 95D of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections: 15
“(1) Every controlling authority in relation to a contributor must ensure that there is provided to GSFNZ, at such time or times as are reasonably specified by GSFNZ, such information as GSFNZ may reasonably require of that authority for the purpose of administering this Act in relation to that contributor. 20
“(2) GSFNZ must not require a controlling authority to provide information under this section unless GSFNZ has first consulted the authority about the requirement.”
- 20 Regulations** 25
Section 97 of the principal Act is amended by repealing paragraphs (a), (c), and (d).
- 21 References to Superintendent in principal Act and regulations**
The principal Act, and any regulations made under that Act, are amended by omitting every reference to the Superintendent, and substituting a reference to GSFNZ. 30

Part 2 Miscellaneous provisions

22 Interpretation

In this Part, unless the context otherwise requires,—

liabilities means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere) 5

property means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal; and includes, without limitation,— 10

(a) choses in action and money:

(b) goodwill:

(c) rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective 15

rights means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective. 20

Transitional provisions relating to restructuring

23 Vesting of property and liabilities

(1) The following vest in GSFNZ on the commencement of this Act:

(a) the property and liabilities comprising the Fund held by the custodian under section 19A of the principal Act; and 25

(b) the property and liabilities of the Superintendent that are connected with the Fund or schemes; and

(c) any other property or liabilities of the Crown, the Superintendent, or a custodian arising from the investment of the Fund; and 30

(d) any other property of the Crown used principally for the purpose of the Fund or schemes, including the whole of the leasehold interest in 2 floors of the building at 33 Bowen Street held in the name of the Government Superannuation Fund Department. 35

- (2) This section does not apply to any contract referred to in **section 24**.

24 Transitional provision relating to existing schemes administration contract

- (1) Any contract entered into under section 19 of the principal Act by the Minister in relation to the administration of the schemes before the commencement of this Act continues in force according to its terms. 5
- (2) GSFNZ is appointed to act as the Minister's agent in relation to the contract. 10
- (3) Expenses incurred by the Crown under the contract are to be treated as if they were expenses incurred by GSFNZ for the purposes of **section 14C** of the principal Act.

25 Records and registers

- (1) Neither the Registrar-General of Lands, nor any other person charged with the keeping of any records or registers, is obliged solely by reason of this Act to change the name of the custodian or the Superintendent or any other person to GSFNZ in those records or registers or in any document. 15
- (2) It is sufficient proof, in the absence of evidence to the contrary, that property or any liability is vested in GSFNZ if a person presents to a registrar or any other person an instrument, whether or not comprising an instrument of transfer,— 20
- (a) executed or purporting to be executed by GSFNZ; and
- (b) relating to any property or liability held, immediately before the commencement of this Act, by the custodian or the Superintendent or any other person; and 25
- (c) containing a recital that the property or liability has vested in GSFNZ by virtue of the provisions of this Act.

26 Taxes and duties

The vesting of assets and liabilities in GSFNZ under **section 23** does not give rise to any liability under the Acts specified in the First Schedule of the Tax Administration Act 1994. 30

27 Certain matters not affected by restructuring

Nothing effected or authorised by this Act—

- (a) places the Crown or GSFNZ (or any member of the GSFNZ board) or any other person in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or as otherwise making any of them guilty of a civil wrong; or 5
- (b) gives rise to a cause of action against the Fund or the Crown or GSFNZ or any member of the GSFNZ board; or 10
- (c) gives rise to a right for any person to—
 - (i) terminate or cancel or modify a contract or an agreement; or
 - (ii) enforce or accelerate the performance of an obligation; or 15
 - (iii) require the performance of an obligation not otherwise arising for performance; or
- (d) places the Crown or GSFNZ (or any member of the GSFNZ board) or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer or issue of any property or the disclosure of any information; or 20
- (e) releases any surety wholly or in part from all or any obligation; or 25
- (f) invalidates or discharges any contract or security.

28 Property or liabilities vested in GSFNZ

The following applies in respect of any property or liabilities vested in GSFNZ under this Act:

- (a) the Crown remains liable to any third party as if the property or liability had not been transferred, but must be indemnified by GSFNZ in respect of any liability to that third party: 30
- (b) any satisfaction or performance by GSFNZ in respect of the property or liability is deemed to also be satisfaction or performance by the Crown: 35
- (c) any satisfaction or performance in respect of the property or liability by any third party to the benefit of

GSFNZ is deemed to be also to the benefit of the Crown.

Compare: 1986 No 124 s 23(5)(d)–(f)

- 29 Minister may enter transitional agreements**
- (1) The Minister may, before **1 April 2001**, enter into any contract, on behalf of GSFNZ, for the purpose of facilitating the new governance arrangements for the Fund and the schemes under this Act. 5
- (2) Any such contract has effect, on and after **1 April 2001**, as if— 10
- (a) GSFNZ had entered into the contract instead of the Minister; and
- (b) any other party to the contract, and GSFNZ, are bound by the contract in all respects.
- 30 Final report and accounts**
- (1) The Ministry of Economic Development must, as soon as practicable after the commencement of this Act, supply to the Minister and GSFNZ a report on matters affecting the Fund during the period from the beginning of the financial year to the date of commencement of this Act. 15
- (2) Section 93B of the principal Act applies to the report. 20
- (3) The report must also include any other information about the performance or operation of the Fund during the period that the Ministry considers relevant.
- Employees*
- 31 Transfer of employees** 25
- (1) The chief executive of the Ministry of Economic Development and GSFNZ may, after consulting the employee concerned, agree to the transfer of an employee from the government superannuation fund unit of that Ministry to GSFNZ.
- (2) **Sections 32 to 34** apply to the employee (referred to in those sections as the transferred employee). 30
- 32 Terms and conditions of employment for transferred employee**
- (1) The appointment of a transferred employee must be on terms and conditions no less favourable to the transferred employee 35

than those applying to the employee immediately before the date of the person's transfer to GSFNZ.

(2) **Subsection (1)**—

- (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and GSFNZ; but 5
- (b) does not apply to a transferred employee who receives any subsequent appointment with GSFNZ.

33 Continuity of employment 10

- (1) Every transferred employee becomes an employee of GSFNZ on the date of transfer.
- (2) However, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of the employee,— 15
 - (a) the contract of employment of that employee is deemed to have been unbroken; and
 - (b) the employee's period of service with the Ministry, and every other period of service of that employee that is recognised by the Ministry as continuous service, is deemed to have been a period of service with GSFNZ. 20

34 No compensation for technical redundancy

A transferred employee is not entitled to receive any payment or any other benefit solely on the ground that—

- (a) the position held by the person in the Ministry has ceased to exist; or 25
- (b) the person has ceased (as a result of the transfer to the new employer) to be an employee of the Ministry.

Past decisions

35 Past decisions 30

- (1) All decisions made by the Government Superannuation Appeals Board or the Superintendent or a former Government Superannuation Board or a Minister in favour of an individual contributor, beneficiary, or potential beneficiary have effect, in so far as they relate to that individual, as if the decision were one that that board or person was entitled to make. 35

- (2) The decision binds GSFNZ in any dealings after the commencement of this Act with the contributor, beneficiary, or potential beneficiary in whose favour the decision was made, unless that person supplied misleading or incorrect information or otherwise acted in bad faith. 5
- (3) However, the decision does not have any precedent effect in favour of any contributor, beneficiary, or potential beneficiary other than the person in whose favour the decision was made.

Amendments to other Acts

- 36 Amendment to Ombudsmen Act 1975** 10
The Ombudsmen Act 1975 is amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the item “GSF New Zealand and any subsidiary of GSF New Zealand.”
- 37 Amendments to Public Finance Act 1989** 15
The Public Finance Act 1989 is amended by inserting in the Fourth, Fifth, and Sixth Schedules, in its appropriate alphabetical order, the item “GSF New Zealand.”
- 38 Amendments to National Provident Fund Restructuring Act 1990** 20
- (1) Section 16 of the National Provident Fund Restructuring Act 1990 is amended by adding the following subsection:
- “(3) The Board may, in addition, provide services in respect of any fund or superannuation scheme that is managed by the Crown or a Crown entity and approved by the Minister for that purpose, on any terms and conditions that the Board thinks fit.” 25
- (2) The Fourth Schedule of the National Provident Fund Restructuring Act 1990 is amended by repealing clause 5(1), and substituting the following subclauses: 30
- “(1) The Board may establish 1 or more committees, each of which may comprise 1 or more members of the Board or other persons as the Board thinks fit.
- “(1A) A member of the Board may be counted in the quorum, and vote, in respect of a proposal to— 35
- “(a) establish a committee to consider and determine a matter; or

“(b) delegate to a committee any of the Board’s powers in respect of a matter,—
whether or not the member has a conflict of interest in relation to that matter.”

- 39 Amendment to Income Tax Act 1994** 5
The Income Tax Act 1994 is amended by repealing section HJ 1, and substituting the following section:
- “**HJ 1 Government Superannuation Fund**
GSF New Zealand is liable for income tax in the same manner in all respects as if the Fund were a superannuation scheme that is a trust and GSF New Zealand were the trustee of that scheme.” 10
- 40 Consequential amendments to other Acts**
The Acts specified in **Schedule 2** are consequentially amended in the manner set out in that schedule. 15
- Amendments and revocations of regulations
and orders*
- 41 Amendments to Government Superannuation Fund (Ceasing Contributions) Regulations 1995**
- (1) The Government Superannuation Fund (Ceasing Contributions) Regulations 1995 are amended by revoking the definition of **effective date** in regulation 2, and substituting the following definition: 20
“**effective date**, in relation to a cessation election, means the expiration of the day on which the notice is received by GSFNZ”. 25
- (2) The Government Superannuation Fund (Ceasing Contributions) Regulations 1995 are amended by revoking regulation 5(1)(b).
- 42 Orders revoked** 30
The orders specified in **Schedule 3** are revoked.
-

s 7(3)

Schedule 1 New Schedule 4 added to principal Act

s 14G

Schedule 4 Further provisions relating to board of GSFNZ

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Schedule 4—continued

- 1 Interpretation**
In this schedule, unless the context otherwise requires,—
board means the GSFNZ board
member means a member of the board 5
quorum means a majority of board members as provided for
in **clause 31**.
- Members' appointments*
- 2 Criteria for appointments**
The Minister must only appoint a person as a member who, in 10
the Minister's opinion, has appropriate skills and experience
to enable GSFNZ to carry out its functions and powers.
- 3 Method of appointment**
The Minister appoints a member by sending written notice to
the member and a copy to GSFNZ. 15
- 4 When appointment takes effect**
Every member takes office from the date stated in the notice
of appointment.
- 5 Position where concurrent office**
A person appointed as a member may hold that office concur- 20
rently with any other office.
- Term of office*
- 6 Term of office**
Except as otherwise provided in this Act, a member—
(a) holds office for a term not exceeding 3 years; and 25
(b) may be reappointed; and
(c) continues in office after the expiry of his or her term of
office (unless the member resigns or is removed from
office) until—
(i) the member is reappointed; or 30
(ii) the member's successor is appointed; or
(iii) the member is informed in writing by the Minis-
ter that the member is not to be reappointed.

Schedule 4—continued*Duties of board members*

- 7 Duties of members**
- (1) A member, when exercising powers or performing duties as a member, must act— 5
- (a) in good faith; and
 - (b) with reasonable care, diligence, and skill; and
 - (c) with honesty and integrity; and
 - (d) in accordance with any code of conduct issued by 1 or more Ministers of the Crown that applies to Crown entities generally. 10
- (2) The board—
- (a) must ensure that GSFNZ, and any subsidiary of GSFNZ, acts in a manner consistent with the functions and powers of GSFNZ, and with GSFNZ's statement of intent and purchase agreement, and any directions given under **section 15A**; and 15
 - (b) must ensure that the activities of GSFNZ, and those of its subsidiaries, are conducted efficiently and effectively; and 20
 - (c) must have regard to the interests of creditors of GSFNZ, and endeavour to ensure that GSFNZ operates in a financially responsible manner.

Liability of members

- 8 Liability of members and committee members** 25
- (1) A member, and a member of any committee of the board, is not personally liable, in an action taken against him or her by GSFNZ, for any liability of GSFNZ, or for any act done or omitted to be done by GSFNZ or the board or by any person acting under a delegation of GSFNZ's functions and powers, provided the member acted in good faith in pursuance or intended pursuance of the functions or powers of GSFNZ. 30
- (2) Every member, and every member of any committee of the board, is indemnified, by GSFNZ,—
- (a) for costs and damages for any civil liability arising from any action brought by a third party, provided the member was acting in good faith and in pursuance or intended pursuance of the functions or powers of GSFNZ; and 35

Schedule 4—continued

- (b) for costs arising from any successfully defended criminal action.
- (3) The Crown must meet any costs and damages arising from this indemnity out of money appropriated by Parliament. 5

Resignation and removal of members

9 Resignation

A member may resign from office by sending a written notice to the Minister and a copy to GSFNZ.

10 Removal from office 10

- (1) The Minister may remove a member from office at any time, without compensation, by written notice to the member.
- (2) The written notice must state the reason for the removal.

Vacancies in GSFNZ's membership

11 Effect of vacancy in membership 15

The functions and powers of GSFNZ are not affected by any vacancy in the board's membership.

Remuneration

12 Remuneration 20

The members are to be paid, out of the Fund, such remuneration by way of fees, allowances, or expenses as is determined by the Minister.

Chairperson and deputy chairperson

13 Appointment 25

- (1) The Minister may appoint 1 of the members as the chairperson and another member as the deputy chairperson. 25
- (2) However, no person may, at the same time, hold the office both of chairperson and deputy chairperson.
- (3) The Minister appoints a chairperson or deputy chairperson by sending written notice to the member and a copy to GSFNZ. 30
- (4) The person takes office as chairperson or deputy chairperson from the date stated in the notice of appointment.

Schedule 4—continued**14 Term of office**

Every person appointed as chairperson or deputy chairperson holds that office until the person—

- (a) resigns from that office; or 5
- (b) is removed from it by the Minister; or
- (c) ceases to be a member.

15 Resignation

- (1) A chairperson or deputy chairperson may resign from that office by sending written notice to the Minister and a copy to GSFNZ stating the date on which the resignation takes effect. 10
- (2) A chairperson or deputy chairperson who resigns from that office continues to be a member of the board unless he or she also resigns from that office under **clause 9**.

16 Exercise of chairperson's functions, duties, and powers during vacancy, etc 15

During a vacancy in the office of chairperson, or while the chairperson is for any reason unable to perform the functions, duties, and powers of the chairperson, the deputy chairperson has and may exercise all of the functions, duties, and powers of the chairperson. 20

*Acts not to be called into question***17 Acts not to be called into question**

No one may question the following in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased: 25

- (a) an appointment of a member to act as chairperson:
- (b) an act done by that member while acting as such:
- (c) an act done by the board while any member is acting as such: 30
- (d) an act done by the board or any member while the member continues to hold office under **clause 6(c)**.

Schedule 4—continued

Disclosure of interest

- 18 Obligation to disclose interest** 5
- (1) A member who (otherwise than as a member) is interested, directly or indirectly, in any of the matters listed in **subclause (2)** must, as soon as practicable after the member knows about the relevant facts, disclose the nature of the interest in accordance with **clause 20**.
- (2) The matters are—
- (a) GSFNZ’s performance of its functions or exercise of a power: 10
 - (b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by GSFNZ.
- 19 Meaning of interested** 15
- A member is **interested** in a transaction to which the board is a party if, and only if, the member—
- (a) is a party to, or will or may derive a material financial benefit from, the transaction; or
 - (b) has a material financial interest in another party to the transaction; or 20
 - (c) is a director, officer, member, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction; or
 - (d) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or 25
 - (e) is otherwise directly or indirectly materially interested in the transaction.
- 20 Disclosure of interest** 30
- (1) A member must, immediately after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with GSFNZ, cause to be entered in the interests register, and disclose to the board,—
- (a) the nature and monetary value of the member’s interest, if the monetary value is able to be quantified; or 35
 - (b) the nature and extent of the member’s interest, if the monetary value cannot be quantified.

Schedule 4—continued

- (2) A general notice entered in the interests register or disclosed to the board to the effect that a member is a shareholder, director, officer, member, or trustee of another named company or other person and is to be regarded as interested in any transaction that may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. 5
- 21 Consequences of disclosure**
- (1) A member who discloses his or her interest under **clause 20**— 10
- (a) must not take part in any deliberation or decision of the board relating to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which a deliberation or decision relating to the matter occurs or is made. 15
- (2) **Subclause (1)** is subject to **clause 23**.
- 22 Matters to be delegated to committee**
- (1) The board must delegate a deliberation or decision to a committee if the effect of **clause 21** is that there is not a quorum of members able to take part in the deliberation or decision, or to form a quorum. 20
- (2) The committee must consist of a majority of persons—
- (a) who are not interested in the transaction; and
- (b) in the case of members of the committee who are not members of the board, who are appointed by the board with the agreement of the Minister. 25
- (3) **Subclause (1)** is subject to **clause 23**.
- 23 Exceptions**
- (1) **Clause 21** does not apply— 30
- (a) to any deliberation or decision of the board that is made in accordance with any existing contract that governs the way in which the deliberation or decision is to be made; or
- (b) to any deliberation or decision of the board to establish a committee, and to delegate the matter to a committee of the board, under **clause 22**. 35

Schedule 4—continued

- (2) **Existing contract** means a contract—
- (a) that was entered into by or on behalf of GSFNZ; and
 - (b) in respect of which the person, or a majority of the persons, making the decision by or on behalf of GSFNZ were not interested in the transaction. 5

- 24 Effect of non-compliance**
The validity of a transaction entered into by GSFNZ is not affected by the fact that a member fails to comply with the disclosure requirements in **clauses 18 to 23**. 10

Use of information

- 25 Restrictions on disclosure or use of GSFNZ's information**
- (1) A member must not disclose to any person, or make use of, or act on, any information that is only available to the member in that capacity. 15
 - (2) **Subclause (1)** does not prevent a member—
 - (a) being required or authorised by this Act or any other Act to disclose, use, or act on, the information; or
 - (b) disclosing, using, or acting on the information for the purposes of GSFNZ or the requirements of the law: 20
 - (c) disclosing the information to the Minister.

- 26 When member may rely on certain information and advice**
- (1) A member, when exercising powers or performing duties as a member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the persons listed in **subclause (2)**. 25
 - (2) The persons are— 30
 - (a) any person who the member believes on reasonable grounds is reliable and competent in relation to the matters concerned; or
 - (b) any other member or committee on which the member did not serve in relation to matters within the member's or committee's designated authority; or 35

Schedule 4—continued

- (c) the Minister.

27 When clause 26 applies

Clause 26 applies to a member only if the member—

- (a) acts in good faith; and 5
 (b) makes proper inquiry if the need for inquiry is indicated
 by the circumstances; and
 (c) has no knowledge that the reliance is unwarranted.

*Procedure of board: general***28 Procedure generally** 10

Except as otherwise provided in this Act, the board may regulate its own procedure.

*Procedure of board: meetings***29 Times and places of meetings**

- (1) The board or the chairperson must appoint the times and 15
 places for meetings of the board.
 (2) The chairperson, or any 2 members, may at any time call a
 special meeting of the board by giving not less than 7 days'
 notice of the special meeting, and of the business to be trans- 20
 acted at the meeting, to each member for the time being in
 New Zealand.
 (3) The notice must be sent to the member's last known address in
 New Zealand.
 (4) No business other than that specified in a notice of special 25
 meeting may be transacted at that meeting.

30 Methods of holding meetings

A meeting of the board may be held either—

- (a) by a number of the members who constitute a quorum,
 being assembled together at the place, date, and time
 appointed for the meeting; or 30
 (b) by means of audio, or audio and visual, or electronic
 communication by which all members participating and
 constituting a quorum can simultaneously communicate
 with each other throughout the meeting.

Schedule 4—continued

- 31 Quorum**
- (1) A quorum for a meeting of the board is a majority of the members at the time the meeting is held.
- (2) No business may be transacted at a meeting of the board if a quorum is not present. 5
- 32 Who presides at meetings**
- (1) The chairperson must preside at all meetings of the board at which he or she is present.
- (2) If the chairperson is not present, or if there is no chairperson, the deputy chairperson, if present, must preside. 10
- (3) The members present must appoint 1 of their number to be the chairperson for the meeting if—
- (a) the chairperson or the deputy chairperson is not present; or 15
- (b) there is no chairperson and no deputy chairperson.
- (4) The elected person has and may exercise all the powers, duties, and functions of the chairperson for the purposes of the meeting.
- 33 Voting at meetings** 20
- All resolutions of the board must be decided by a majority of the votes cast.
- 34 Resolutions**
- (1) A resolution in writing signed or assented to by letter, facsimile message, or electronic message by all members is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted. 25
- (2) The resolution may consist of several documents in the same form, each signed or appearing to have been sent by 1 or more members. 30
- 35 Method of contracting**
- (1) A contract or other enforceable obligation may be entered into by GSFNZ as stated in **subclauses (2) to (5)**.

Schedule 4—continued

- (2) An obligation that, if entered into by an individual, would be required to be by deed, may be entered into on behalf of GSFNZ in writing, signed under the name of GSFNZ by— 5
- (a) 2 or more of its members; or
- (b) 1 or more attorneys appointed by GSFNZ in accordance with **clause 36**.
- (3) An obligation that, if entered into by an individual, is required to be in writing, may be entered into on behalf of GSFNZ in writing by a person acting under GSFNZ's express or implied authority. 10
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of GSFNZ in writing or orally by a person acting under GSFNZ's express or implied authority. 15
- (5) GSFNZ may, in addition to complying with **subclauses (2) to (4)**, affix its common seal, if it has one, to the contract or document containing the enforceable obligation.
- (6) This clause applies to a contract or other obligation— 20
- (a) whether or not that contract or obligation was entered into in New Zealand; and
- (b) whether or not the law governing the contract or obligation is the law of New Zealand.
- 36 Attorneys**
- (1) GSFNZ may, by an instrument in writing executed in accordance with **clause 35(2)**, appoint a person as its attorney either generally or in relation to a specified matter. 25
- (2) An act of the attorney in accordance with the instrument binds GSFNZ.

Delegations 30

- 37 Ability for board to delegate functions and powers**
- The board may by writing, either generally or specifically, delegate any of the functions or powers of GSFNZ to a committee of the board or to any person.

Schedule 4—continued

- 38 Certain powers must not be delegated**
The board must not delegate any of the following powers:
- (a) the power of delegation in **clause 37**:
 - (b) the power to grant a power of attorney: 5
 - (c) the power to appoint an investment manager or administration manager in **section 19**:
 - (d) the power to appoint a custodian in **section 19A**.
- 39 Effect of delegation**
- (1) A person to whom any functions or powers are delegated under **clause 37** may carry out those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on the person directly by this Act and not by delegation. 10
 - (2) **Subclause (1)** is subject to any direction given or condition imposed by the board. 15
- 40 Presumption of acting in accordance with delegation**
A person who appears to act under a delegation under **clause 37** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation. 20
- 41 Other matters relating to delegation**
A delegation under **clause 37**—
- (a) is revocable at will, but the revocation does not take effect until it is communicated to the delegate; and
 - (b) continues in force according to its terms until it is revoked; and 25
 - (c) does not prevent the board from performing the functions or exercising the power.
- Subsidiaries*
- 42 Subsidiaries** 30
- (1) The board must ensure that—
 - (a) the functions and powers of any subsidiary of GSFNZ are no broader than those of GSFNZ; and
 - (b) GSFNZ controls the composition of the board of the subsidiary at all times; and 35

Schedule 4—continued

- (c) GSFNZ holds more than 50% of the voting shares of the subsidiary at all times.
- (2) **Clauses 44 to 51** apply to any subsidiary of GSFNZ.

Committees

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43 GSFNZ committees

- (1) The board may, by writing, appoint a committee to—
- (a) advise the board on any matters relating to GSFNZ's functions or powers that are referred to a committee by the board; or 10
- (b) exercise any of GSFNZ's functions or powers that are delegated to the committee under **clause 22 or clause 37**.
- (2) The board may, by resolution, alter, discharge, continue, or reconstitute a committee appointed under **subclause (1)**.
- (3) Committee members may be members of the board or other persons. 15
- (4) A committee may regulate its own procedure, subject to any direction from the board.
- (5) **Clauses 13 to 35** apply to the committee.

Employees

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44 Appointment of chief executive officer

- (1) The board may from time to time appoint a chief executive officer.
- (2) The conditions of employment of a chief executive officer must be determined by the board. 25
- (3) The board must not agree to any conditions of employment for a chief executive officer without—
- (a) consulting the State Services Commissioner; and
- (b) having regard to all recommendations the Commissioner makes to the board within a reasonable time of being consulted. 30

45 Appointment of other employees

- (1) The chief executive officer may appoint those employees, including employees on secondment from other organisations, that he or she thinks necessary for the efficient performance of 35

Schedule 4—continued

GSFNZ's functions, and may negotiate the terms and conditions of employment of such employees.

- (2) Subject to the terms and conditions of employment, the chief executive officer may at any time terminate or suspend the employment of any of GSFNZ's employees. 5

46 Personnel policy

- (1) The board must, if it appoints employees, operate a personnel policy that complies with the principle of being a good employer. 10

- (2) For the purposes of this clause, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring— 15

- (a) good and safe working conditions; and
- (b) an equal employment opportunities programme; and
- (c) the impartial selection of suitably qualified persons for appointment; and
- (d) recognition of— 20
 - (i) the aims and aspirations of Maori; and
 - (ii) the employment requirements of Maori; and
 - (iii) the need for involvement of Maori as employees of the board; and
- (e) opportunities for the enhancement of the abilities of individual employees; and 25
- (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) recognition of the employment requirements of women; and 30
- (h) recognition of the employment requirements of persons with disabilities.

47 Equal employment opportunities

- (1) The board must, if it appoints employees,— 35
- (a) develop and publish in each year an equal employment opportunities programme; and

Schedule 4—continued

- (b) ensure in each year that the programme for that year is complied with and reported on within the board's annual report.
- (2) An equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons. 5
10
- 48 Choice of procedure**
If the circumstances giving rise to a personal grievance by a person employed by the board are also such that that person would be entitled to make a complaint under the Human Rights Act 1993, that person may take 1, but not both, of the following steps: 15
- (a) the person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the Employment Relations Act 2000 or the relevant award or agreement; or 20
- (b) the person may make, in relation to those circumstances, a complaint under the Human Rights Act 1993.
- 49 Superannuation or retiring allowances**
For the purpose of providing a superannuation fund or retiring allowances for its employees, the board may from time to time pay sums by way of subsidy or contribution into any superannuation scheme that is registered under the Superannuation Schemes Act 1989. 25
- 50 Application of certain acts to members and employees**
No person is deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment under **clause 44 or clause 45.** 30

Schedule 4—continued

- 51 Existing Government Superannuation Fund members**
- (1) Despite **clause 50**, a person who, immediately before becoming an employee of the board, was a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is, for the purposes of that Act, deemed to be employed in the Government service so long as that person continues to be an employee of the board; and that Act applies to that person in all respects as if that person's service as an employee of the board were Government service. 5
- (2) Nothing in **subclause (1)** entitles a person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor. 10
- (3) For the purposes of applying the Government Superannuation Fund Act 1956 in accordance with **subclause (1)**, **controlling authority**, in relation to that employee, means the board. 15
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Schedule 2

Consequential amendments to other Acts

Administration Act 1969 (1969 No 52)

Omit from the definition of the term **trustees of a superannuation fund** in section 65(1) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”. 5

Child Support Act 1991 (1991 No 142)

Omit from section 186(1)(b)(i) the words “the Superintendent” and substitute the expression “GSFNZ”. 10

Cook Islands Act 1915 (1915 No 40)

Omit from section 84B(1)(b) the words “the Superintendent of the Fund” and substitute the expression “GSFNZ”.

Omit from section 84B(4) the words “Government Superannuation Board, elect to contribute to the Fund, at such rate as that Board” and substitute the words “GSFNZ, elect to contribute to the Fund, at such rate as GSFNZ”. 15

Omit from section 85A(1) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”. 20

Omit from section 85A(4) the words “Government Superannuation Board determines, such sum as the Board” and substitute the words “GSFNZ determines, such sum as GSFNZ”.

District Courts Act 1947 (1947 No 16)

Omit from the definition of the term **employing department** in section 84L(1) the words “the Superintendent” and substitute the expression “GSFNZ”. 25

Finance Act 1961 (1961 No 120)

Omit from section 9(5) the words “the Superintendent of the Government Superannuation Fund may allow in that behalf, such sum as the Superintendent” and substitute the words “GSFNZ may allow in that behalf, such sum as GSFNZ”. 30

Higher Salaries Commission Act 1977 (1977 No 110)

Omit from section 17(2) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”. 35

Niue Act 1966 (1966 No 38)

Omit from section 670(1) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”.

Omit from section 670(5) the words “the Superintendent of the Government Superannuation Fund determines, such sum as the Superintendent” and substitute the words “GSFNZ determines, such sum as GSFNZ”. 5

Police Act 1958 (1958 No 109)

Omit from section 28(5A)(a) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”. 10

Omit from section 28A(1) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”. 15

Omit from section 28C(1A)(a) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”.

Omit from section 28D(1A)(a) the words “the Superintendent of the Government Superannuation Fund” and substitute the expression “GSFNZ”. 20

Summary Proceedings Act 1957 (1957 No 87)

Omit from the definition of the term **employing department** in section 106B(1) the words “the Superintendent” and substitute the expression “GSFNZ”. 25

Schedule 3

Orders revoked

Government Superannuation Fund (Cost-of-living Allowance)	
Order 1984 (SR 1984/89)	
Superannuation (Cost of Living Allowance) Order 1976	5
(SR 1976/159)	
Superannuation (Dean's Administration Allowance) Order 1969	
(SR 1969/130)	
Superannuation (Definition of Salary) Order 1948	
(SR 1948/125)	
	10
Superannuation (Judicial and Other Statutory Salaries) Order 1976	
(SR 1976/314)	
Superannuation (Post Office Employees) Order 1963	
(SR 1963/25)	
Superannuation (Post Office Employees) Order 1966	
(SR 1966/111)	
Superannuation (Post Office Industrial Nurses) Order 1966	
(SR 1966/110)	
Superannuation (Public Health Nurses) Order 1963	
(SR 1963/26)	
	20
Superannuation (Public Service Employees) Order 1963	
(SR 1963/27)	
Superannuation (Railway Employees) Order 1963	
(SR 1963/28)	
Superannuation (Regrading Allowance) Order 1959	
(SR 1959/45)	
	25
Superannuation (Samoan Adjustment Allowance) Order 1967	
(SR 1967/107)	